

Newsletter BETKOSOL n. 2/2022

Contents

Last updates

→ Soon on the BETKOSOL Website:

D.4 Databook

The pandemic has shown that offers of financial support in an emergency are sometimes abused by practices of individuals. This affects not only those in immediate need, but also the interests of all taxpayers. The European Union is also involved in many projects in the Member States and the Next Generation EU has increased this involvement. The BETKOSOL project aims to study how the financial interests of the European Union are protected in the individual Member States, and in particular Italy, Poland, Belgium, and Germany. In this context, the level of knowledge and awareness of potential institutions is of great interest. For this reason, deliverable D4 aims to examine the practices of the institutions of the Member States, of the European institutions through empirical research. Furthermore, this empirical research also concerns some relevant target groups for understanding what perception of the protection of financial interest is present in civil society.

D.5 The protection of the EU financial interest in contemporary age: insights from National and European institutions

This deliverable D.5 is focused on the comparison of the results of qualitative interviews conducted at the European institutions level and those at the national and civil society levels. After this short presentation, the report is organised in other five sections, which already summarised some cross-cutting topics. In Section No. 2, the interviews are used to challenge the coincidence between the European and National protection of the financial interest, letting arise how, on the one hand, there is a certain degree of integration but, on the other hand, differences in standards among countries and inside them remain. Here, the choice of the authors has been not to keep separate the analysis of interviews according to the country. Differently, in the other three following sections, results from each country are taken separately in sub-sections. However, each paragraph has a leading question. In the case of Section No. 3, the authors compare the way in which each country is going towards the protection of the EU financial interest and, hence, if thanks to a stabilisation of the current legal framework or through expected reforms. The first alternative seems to be confirmed, said differently, of an incremental adaptation of the *status quo*. In Section No. 4, the authors work on the main “critical sector” emerged during the interviews and the public procurement one appears to be a common element for at least two countries out of four. In Section No. 5, on the changes during the pandemic, there is a certain ambivalence among countries and interviewees inside the same country. Someone talks about new frauds, someone is aware of new risks of frauds for the future, someone else talks about new techniques of investigation that arose during the pandemic. Finally, the Section No. 6 is entirely dedicated to giving an insight from EU institutions interviews, with results that in part confirm the position of MSs and in part go beyond them. If a view of the existence of a sort of communicating vessel system between MSs and EU about the protection of the “financial interest” more in general, this is indeed an element that even more proves how the difference between the National and the European financial interest - the core of the theoretical notion and not how the protection is fulfilled - tends to blur as the European integration goes by.

→ on the expected conference.

See [here](#) the agenda of BETKOSOL Final Conference (26th-27th May 2022)

Flash news

→ **European Parliament resolution of 24 March 2022 on MFF 2021-2027: fight against oligarch structures, protection of EU funds from fraud and conflict of interest (2020/2126(INI))**

In the [resolution of 24 March 2022 on MFF 2021-2027](#), the European Parliament deals with two issues.

First, the European Parliament noted that in the current EU political context, the term ‘oligarchy’ is used as a way of pointing out the influence of the wealthy and powerful in politics and government, and that of the economic, financial, and industrial actors who can exercise influence that is typically used to benefit the few at the expense of the many.

The European Parliament highlights that member of national governments and other holders of political positions are part of the oligarchy in some Member States and have actively sought to use EU funds to benefit themselves financially.

The European Parliament notes with particular concern that the occurrence of such oligarchic groups, which do not refrain from using government tools or criminal practices, or from supporting criminal groups, has reached an unprecedented magnitude in the past several years.

The European Parliament is concerned that oligarchic systems are often connected to widespread corruption, tight control over media and a judicial system which is not independent from the oligarchs themselves.

The European Parliament insists therefore that the EU promote transparency in the spending of EU and national funds by carrying out more efficient data collection and by strengthening the rules related to it, especially as regards final beneficiaries and beneficial owners, and that it monitors closely and enforces the proper implementation of such rules.

The European Parliament calls on the Commission, in this context, to step up its efforts and reinforce its cooperation with the Member States in this direction.

Secondly, the European Parliament recalls that to reinforce the fight against fraud by means of criminal law, the EU co-legislators agreed on a definition of fraud (and other criminal offences, such as intentional misappropriation, corruption and money laundering) affecting the EU’s financial interests in the PIF Directive.

The European Parliament also highlights that a new definition of conflict of interest, which prevents any person involved in budget implementation, including national authorities at any level, from taking any action which may bring their own interests into conflict with those of the EU, was introduced in Article 61 of the Financial Regulation and explicitly extended to the implementation of the EU funds under shared management, and broadened to include ‘any other direct or indirect personal interest’, thus covering a much wider range of cases.

The European Parliament encourages the Commission to further strengthen the conflict-of-interest provisions under Article 61 of the Financial Regulation as part of its upcoming revision, about the preparation of the budget, to allow for the more precise identification of the categories of public officers who are able to influence financial flows from the EU budget and prevent the occurrence of such conflicts.

Lastly, the European Parliament asks the Commission, nevertheless, to amend Article 167(1)(c) of the Financial Regulation to include a more explicit definition of ‘professional conflicting interests’ to ensure a uniform interpretation in all Member States and enable the EU institutions to take adequate measures in cases of bidders with financial interests in policy-related service contracts.

→ **The decision of the Spanish fiscal general de Estado: EPPO’s Statement**

On 28 March 2022 the Spanish Fiscal General del Estado issued a decision on the division of competences between EPPO and the Spanish Fiscalía Anticorrupción for the investigation of the same facts concerning offences related to the activities of EPPO. The EPPO therefore released a statement (see [here](#)) in which it pointed out that it considered that this decision was not in line with European

law and announced that it would continue its investigation. In its statement, the EPPO also expressed concern and further remarks on the procedure leading to this decision, noting that the deciding body was partial and that there were no remedies to ensure the supremacy of European law in this specific situation. This case clearly shows the operational difficulties that EPPO's activity may encounter, considering its need to rely on the cooperation of national authorities; a complexity that the desk research part and the empirical investigation of the BETKOSOL project have well highlighted.

→ Italy: the first report on the NRRP's implementation by the National Court of auditors

The National Court of Auditors (NCA) is called to report periodically on the National Recovery and Resilience Plan (NRRP) and on the National Complementary Plan. In particular, the NCA reports to Parliament at least every six months. The Decree Law N. 77/2021, that has established, among others, the NRRP's governance, also provides for the NCA to exercise management's control and to carry out cost-effectiveness and cost-efficiency analysis regarding the acquisition and use of financial resources under the new national recovery facility (Art. 7, par. 7). This control also involves cooperation and coordination with the European Court of Auditors (ECA) (according to Art. 287, par. 3, Treaty on the Functioning of the EU).

In March (2022), the new report has been published for the first time. Considering the recent launch of the plan, the document has a provisional structure. However, it is already organized according to the scheme that it will assume once fully operational. It is composed of two sections: the first one is dedicated to the overall progress in the NRRP's implementation; the second one, instead, is centered on specific issues of particularly relevance.

According to the report, the implementation is proceeding with the involvement of all institutional actors, without having suffered particular delays so far. Both in the first half of the programming (the second semester of 2021) and in the current one (for the moment the first trimester of 2022), the targets/milestones have been or are being adequately implemented. All actions achieved the first 51 objectives of the last semester, as recently recognized by the European Commission itself; they are related to 63 initiatives (22 per cent of the total), which are associated with financial resources of 46.5 billion (about a quarter of the plan's total). Moreover, following the achievement of the first set of six-monthly objectives, 15 projects can already be considered completed (5.3 per cent of the total number of initiatives, for a total of 1.5 billion), for which no further milestones or targets remain to be reported. In the current semester, the progress of the Plan imposes a further 45 European objectives, six of which are currently already achieved. The new milestones/targets that are expiring involve a further 50 projects, thus bringing the number of initiatives activated by European objectives to 113 (equal to almost 40 per cent of the total), with financial resources of 79 billion (41 per cent of the total). In addition, in the current semester, 70 national intermediate objectives and a further 55 targets linked to projects financed with the national complementary fund are expected.

The launch of reforms, whether "accompanying" (*di accompagnamento*) or "enabling" (*trasversali*) to the NRRP, is particularly intense and complex. The steps taken in fields from which significant results are expected in the near future are still preliminary (i.e. fiscal reform, spending review, public contracts, administrative reinforcement). It is then added that remains essential, for the achievement of the planned goals, the availability of adequate administrative structures, a planning capacity capable of assisting and guiding the implementing bodies, effective coordination between levels of government and an effective and efficient regulatory framework. On these fronts, a certain slowness in implementation persists, despite some positive feedbacks.

Other delays are reported regarding the implementation of the technical coordination structures of the NRRP activities within the individual administrations responsible for the implementation. If, on the one hand, the regulatory acts concerning the relative establishment and organization were adopted, on the other hand, the staffing of the structures in question was not completed in a timely manner, about the managerial positions for which about 40 per cent of the assignments of assignments still to be finalized. There are also cases of almost complete uncovering of managerial positions, with the consequent risk that organizational difficulties may result in delays.

The availability of technical structures to support central reforms and the planning capacities of territorial administrations is also still limited. Difficulties are particularly accentuated in the case of local authorities and, more particularly, of those of the South, especially when there is a concentration of calls (as happened in December 2021), with time slots of particularly stringent participation (an average of about two months). In this regard, it will be essential that the wide range of technical assistance tools and the strengthening of the technical-administrative capacity of the territorial realities be readily available. According to the NCA, the recent establishment of a specific

technical coordination table dedicated to technical assistance actions, by the General Accounting Office (Ministry of the economy and finance), is moving in the right direction.

However, the conclusions of the report should be considered limited. This is due to a slower start-up, than expected, of the unique information system. For example, an overall picture of the specific interventions relating to the “existing” measures transited in the Plan is missing. Furthermore, the data currently available relating to national complementary projects indicate only partial progress of what was originally planned.

→ Billions from the EU closer than further. Will the European Commission approve the Polish National Recovery Plan?

The decision to begin work on changes to the Supreme Court, which are necessary to unblock EU funds for Poland, has been made for many weeks. The Speaker of the Sejm, Elżbieta Witek, made no secret that work on these projects had been hampered primarily by the ruling camp's lack of agreement on the shape of the changes. In the end, the Parliament received as many as five draft bills on the repair of the Supreme Court's Disciplinary Chamber and the settlement with the European Commission, out of which the Sejm sent three for further work: the presidential draft and two competing parliamentary drafts prepared by the parties in the government coalition - Law and Justice and Solidarna Polska (see more [here](#)).

It seems that the presidential project has the best chances. The President proposes to replace the Disciplinary Chamber with a new Chamber of Professional Responsibility selected from among all the judges of the Supreme Court in a two-stage procedure: 33 of the 94 judges would be drawn by lot, and the President would appoint 11 of them for a five-year term. They would adjudicate half-time in the new chamber and half in their home chamber. It also provides a procedure for reviewing ID rulings. Those who have reservations about a particular judge in any particular case could initiate a "test of independence" of the judge, i.e. a kind of exclusion from the case (see: parliamentary paper no. 2011, see more [here](#)). It is worth noting that in talks with Poland, the European Commission returned to the idea of including judicial reform in the National Recovery Plan (NRP) as a 'milestone'.

This would make it possible not to wait for the approval of the NRP for the adoption and full implementation of the reform. However, the first payments from the NRP - in the summer or early autumn - would only flow to Poland after the changes to the disciplinary system for judges promised by Poland had been implemented. One can now hear from both the Polish and EU sides that a revival in NRP talks is also possible because of Russia's war of aggression against Ukraine. This threat is partly a reason and a pretext to look for a quick settlement (see more [here](#)).

→ Next Generation EU and Belgian Issue: EU investment for Belgium 'no free lunch', warns High Council of Finance

The Belgian High Council of Finance (HCF) has warned the Belgian government not to rely on the European Commission's Recovery and Resilience Facility fund, which promises Belgium €5.9 billion in loans and subsidies. The loans are part of the Next Generation EU to build stronger national economies in EU Member States following the global Covid-19 pandemic. Investment is to be used to support Europe's green and digital transformation. But this money must eventually be repaid, one way or another, and the council claims the Belgian government is not prepared. In a [report](#) published by the HCF, the council warned the Federal Government that it must get serious about its budget restructuring proposals. By the end of the month, it must submit its multi-year budget plans to the European Union.

Against the backdrop of the government's uncertain debt situation, European subsidies have become much less palatable. According to the HCF, the structural deficit must be reduced by 0.6% annually to support the repayment of European debts. In other words, the government needs to cut back and find more than €9 billion between 2023-2025, a figure much larger than the proposed €5.9 billion European funding. The HCF advises the Belgian government to not rely on the riches promised by the European government.

In a comment to Flemish newspaper [De Standaard](#), Belgian Secretary of State for Recovery, Strategic Investments and Science Policy Thomas Dermine disagreed with the HCF's findings. Dermine hopes that new tax initiatives will help plug the gap between government financial imbalances and European debt repayments. The Secretary is hopeful that new levies on plastic waste and digital goods would help Belgium to pay back the debt eventually. The Belgian lawmaker hailed

the European Recovery and Resilience Facility fund as an example of productive collective action, necessary to help Europe bounce back from the economic shocks of the Covid pandemic (see more [here](#)).

→ **The European Commission's 2022 Work Program: Voices from Germany**

On 18 February, the German Parliament debated the European Commission's work program for 2022. In this respect, the government emphasized the need for a "climate-neutral core redevelopment", but also the preservation of human rights as well as the protection of the rule of law, freedom, and democracy. Against this backdrop, the ruling of the European Court of Justice on 16 February, which declared the so-called rule of law mechanism adopted by the EU in December 2020 to be legal in all respects, met with cross-party approval. In addition, the new orientation of the EU trade strategy planned by the Commission was praised; the Stability and Growth Pact must be further developed and simplified; the EU Global Gateway strategy must receive more decisive support.

The government opposition criticized the fact that the EU Commission hardly presented any concrete initiatives to achieve the goal of climate neutrality by 2050 and those initiatives to reform the European asylum and migration policy were also missing. They also called for improvements on the EU revenue side through the introduction of a Europe-wide wealth tax, a digital tax, and a financial transaction tax. At the same time, there was a warning against a hasty return to the Stability and Growth Pact.

The BETKOSOL Team